

### **REMARKS**

In the Office Action mailed October 6, 2005, Claims 35, 42-52, and 54-61 are pending for consideration. All of the claims were objected to and rejected on various statutory grounds, each of which is addressed in turn below.

By the present amendment, Claims 38, 59, and 60 have been amended to correct to include limitations on the solubilizer and the release modulator and to incorporate the limitations of claim 53. Claims 48-51 have been amended to eliminate the use of the term "about." Claim 42 has been amended to eliminate the phrase "dissolving salt or complex." Claims 36-41, 53, and 62-64 have been canceled. New claims 65-82 have been added. Support for the amendments as well as the new claims can be found in originally filed claims 36-41, and in the originally filed specification on page 13, line 28 to page 14, line 6; page 11, line 13 to page 16, line 17; page 9, lines 13-15; page 22, line 28 to page 25, line 33, and page 16, lines 7-12. Applicants submit that no new matter has been added thereby.

The specification has also been amended to correct the priority of the application as suggested by the Examiner.

It is to be understood that all amendments have been made solely for the purpose of expediting prosecution of the present application, and without conceding the correctness of the Examiner's rejection. Accordingly, Claims 35, 42-52, 54-61, and 65-82 are pending for consideration in the present application. Applicants respectfully submit that the present claims are allowable over the Patel reference, and that the rejections in view thereof are now moot.

### Claim and Specification Objections

The Applicants have amended the priority data on page 1 of the specification to include the filing date of U.S. Patent 6,248,363 pursuant to the Examiner's recommendation.

### 35 U.S.C. 112, Second Paragraph Rejections:

Claims 48-51, and 53 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite due to the use of the term "about" in connection with the recited numerical ranges. Although the Applicant's continue to dispute the Examiner's rejection of the term "about," in order to expedite prosecution of the claims the applicants have amended the rejected claims so as to eliminate the use of the term "about." Reconsideration is requested based on the amendment.

Claims 42-46 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite with respect to the use of the phrase "dissolving salt or complex." Without conceding the correctness of the rejection and in order to expedite prosecution, the Applicants have amended claim 42 to eliminate the phrase "dissolving salt or complex." It is believed that such an amendment should overcome the Examiner's rejection of all of claims 42-46.

Reconsideration is respectfully requested.

### Statutory Double Patenting Rejections

The Examiner has provisionally rejected Claims 35, 47-52 under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 3, 17-20, 22, and 25 of copending U.S. Patent Application No. 11/122,788. Applicants assert that the currently amended claims are distinct

from those of the '788 application and as such it is respectfully requested that this rejection be withdrawn. In the event that the Examiner chooses to maintain such rejection, the Applicants request that it be held in abeyance until the claims of the present application have been finalized and allowed.

Obviousness-Type Double Patenting Rejections:

The Examiner has provisionally rejected presently pending claims 35, 42-52, and 54-61 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the composition claims of copending U.S. Patent Applications Nos. 10/444,935; 10/074,687; 10/764,016; and 11/122,788 and are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the composition claims of U.S. Patent Nos. 6,451,339; 6,383,471; 6,309,663; and 6,267,985. The Applicants respectfully traverse this rejection. The Applicants assert that the Examiners rejection is inadequate as set forth in MPEP § 804 in that the Examiner has failed to set forth the claims of each of the cited references which on which the rejection is based. Additionally, the Applicants assert that the currently pending claims are patentably distinct from the claims of each of the cited references. As such, reconsideration of the claims is requested.

35 U.S.C. § 102 Rejections:

The Examiner has rejected Claims 35-47, 51-52, and 57-64 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,294,192 to Patel et al (hereinafter "the '192 patent"). Claim 35 has been amended to incorporate the limitations of previously presented claim 53, namely specific amounts of each of the solubilizer, release modulator, and the cilostazol. As

such, the ‘192 patent does not teach each and every element of the presently pending claims.

Therefore, it is respectfully requested that the rejection be withdrawn and the claims allowed.

35 U.S.C. § 103 Rejections:

The Examiner has rejected Claims 35, 42-52, and 54-61 under 35 U.S.C. § 103(a) as being allegedly unpatentable over the ‘192 patent in light of Stedman’s Medical Dictionary (1972, p. 595 and 1400), in view of U.S. Patent No. 6,458,373 to Lambert et al. (hereinafter “the ‘373 patent”), and The Merck Index (Monograph 1882, 1989) , U.S. Patent No. 6,309,663 to Patel et al (hereinafter “the ‘663 patent”) and U.S. Patent No. 6,623,755 to Chen (hereinafter “the ‘755 patent”).

The presently pending application was at the time of invention, and currently is, under obligation to assign to the same entity as that of the ‘192 patent. Additionally, the ‘192 patent only qualifies as “prior art” under 35 U.S.C. 102(e). As the ‘192 patent only qualifies as prior art under 35 U.S.C. 102(e), and as the present application is subject to assignment to the same entity as the ‘192 patent, the ‘192 patent is disqualified as prior art under 35 U.S.C. 103(c). Thus the ‘192 patent is not available as a prior art reference to use in establishing a *prima facie* case of obviousness. As Patel is no longer available as a reference, the presently asserted combination of references is improper and the rejection therefore moot. Accordingly, Claims 35, 42-52, and 54-61 remain pending in the present application and allowance thereof is respectfully requested.

**CONCLUSION**

In view of the foregoing, the Applicants believe that Claims 35, 42-52, 54-61, and 65-82 present allowable subject matter and the prompt allowance thereof is requested. If any impediment to the allowance of these claims remains after consideration of the present amendment and above remarks, and such impediment could be removed during a telephone interview, the Examiner is invited to telephone the undersigned attorney, so that such issues may be resolved as expeditiously as possible.

Please charge any additional fees except for Issue Fee or credit any overpayment to Deposit Account No. 20-0100.

Dated this 4th day of October, 2006.

Respectfully submitted,

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